

MAINE STATE LEGISLATURE

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STATE OF MAINE
SENATE
115TH LEGISLATURE
SECOND REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 836, L.D. 2140, Bill, "An Act to Provide Increased Local Participation in Comprehensive Land Use Planning"

Amend the bill by striking out the title and substituting the following:

'An Act Regarding Growth Management'

Further amend the bill by striking out everything after the title and before the statement of fact and inserting in its place the following:

'Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, Public Law 1991, chapter 622, Part F abolished the Office of Comprehensive Land Use Planning in the Department of Economic and Community Development and removed the State from participation in local growth management planning; and

Whereas, the repeal of numerous statutory references to the former Office of Comprehensive Land Use Planning were inadvertently omitted from Public Law 1991, chapter 622, Part F; and

Whereas, enactment of Public Law 1991, chapter 622, Part F inadvertently voided rules governing the training and certification of municipal code enforcement officers that were adopted by the former Office of Comprehensive Land Use Planning; and

Whereas, enactment of Public Law 1991, chapter 622, Part F created statutory ambiguities pertaining to the status of local growth management plans and certain zoning ordinances adopted prior to the effective date of that Public Law; and

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2 Whereas, enactment of Public Law 1991, chapter 622, Part F
created statutory ambiguities pertaining to municipal authority
to adopt impact fee ordinances; and

4 Whereas, Public Law 1991, chapter 622 was effective on
6 December 23, 1991 and this Act must take effect immediately and
be retroactive to December 23, 1991; and

8 Whereas, in the judgment of the Legislature, these facts
10 create an emergency within the meaning of the Constitution of
Maine and require the following legislation as immediately
12 necessary for the preservation of the public peace, health and
safety; now, therefore,

14 Be it enacted by the People of the State of Maine as follows:

16 Sec. 1. 12 MRSA §8003, sub-§3, ¶P, as enacted by PL 1989, c.
18 555, §6, is amended to read:

20 P. The director shall act as a liaison with the Department
of Environmental Protection, the Maine Land Use Regulation
22 Commission, the Department of Inland Fisheries and Wildlife,
the--Office--of--Comprehensive--Land--Use--Planning and the
24 Cooperative Extension Service on forestry issues.

26 Sec. 2. 12 MRSA §8867, sub-§1, ¶A, as amended by PL 1991, c.
28 591, Pt. G, §8, is further amended to read:

30 A. Seek advice from ad hoc advisory boards formed pursuant
to Title 5, section 12008, and technical working groups on
32 forest management issues that vary from region to region,
including regeneration and clear-cutting rules; and

34 Sec. 3. 12 MRSA §8867, sub-§1, ¶B, as enacted by PL 1989, c.
36 555, §10, is amended to read:

38 B. Consult with the Commissioner of Environmental
Protection and the Commissioner of Inland Fisheries and
40 Wildlife to ensure consistency between the departments'
rules and the consideration of wildlife habitat and
environmental protection; and

42 Sec. 4. 12 MRSA §8867, sub-§1, ¶C, as enacted by PL 1989, c.
44 555, §10, is repealed.

46 Sec. 5. 30-A MRSA §4301, sub-§13, as enacted by PL 1989, c.
48 104, Pt. A, §45 and Pt. C, §10, is amended to read:

50 13. Office. "Office" means the Office of Comprehensive
Land--Use--Planning Community Development in the Department of
Economic and Community Development.

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Sec. 6. 30-A MRSA §4314 is enacted to read:

§4314. Transition; savings clause

1. Comprehensive plan. A municipal comprehensive plan or land use regulation or ordinance adopted or amended by a municipality under former Title 30, chapter 239, subchapter V or VI remains in effect until amended or repealed in accordance with this subchapter.

2. Zoning ordinances. Notwithstanding section 4352, subsection 2, a zoning ordinance not consistent with a comprehensive plan adopted under this subchapter is void 24 months after adoption of the plan.

3. Land use ordinances. Any land use ordinance not consistent with a comprehensive plan adopted according to this subchapter is void:

A. After January 1, 1998, in any municipality that received a planning assistance grant and an implementation assistance grant under former section 4344, subsection 4 prior to December 23, 1991; and

B. After January 1, 2003, in all other municipalities.

4. Encumbered balances at year-end. At the end of each fiscal year, all encumbered balances accounts for financial assistance and regional planning grants may be carried twice.

Sec. 7. 30-A MRSA §4326, as amended by PL 1991, c. 622, Pt. F, §29, is further amended to read:

§4326. Local growth management program

A local growth management program may shall include at least a comprehensive plan, as described in subsections 1 to 4, and an implementation program as described in subsection 5.

1. Inventory and analysis. A comprehensive plan may shall include an inventory and analysis section addressing state goals under this subchapter and issues of regional or local significance the municipality considers important. The inventory must be based on information provided by the State, regional councils and other relevant local sources. The analysis must include 10-year projections of local and regional growth in population and residential, commercial and industrial activity; the projected need for public facilities; and the vulnerability of and potential impacts on natural resources.

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The inventory and analysis section may must include, but is not limited to:

- A. Economic and demographic data describing the municipality and the region in which it is located;
- B. Significant water resources such as lakes, aquifers, estuaries, rivers and coastal areas and, where applicable, their vulnerability to degradation;
- C. Significant or critical natural resources, such as wetlands, wildlife and fisheries habitats, significant plant habitats, coastal islands, sand dunes, scenic areas, shorelands, heritage coastal areas as defined under Title 5, section 3316, and unique natural areas;
- D. Marine-related resources and facilities such as ports, harbors, commercial moorings, commercial docking facilities and related parking, and shell fishing and worming areas;
- E. Commercial forestry and agricultural land;
- F. Existing recreation, park and open space areas and significant points of public access to shorelands within a municipality;
- G. Existing transportation systems, including the capacity of existing and proposed major thoroughfares, secondary routes, pedestrian ways and parking facilities;
- H. Residential housing stock, including affordable housing;
- I. Historical and archeological resources including, at the discretion of the municipality, stone walls, stone impoundments and timber bridges of historical significance;
- J. Land use information describing current and projected development patterns; and
- K. An assessment of capital facilities and public services necessary to support growth and development and to protect the environment and health, safety and welfare of the public and the costs of those facilities and services.

2. **Policy development.** A comprehensive plan may must include a policy development section that relates the findings contained in the inventory and analysis section to the state goals. The policies must:

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- 2 A. Promote the state goals under this subchapter;
- 4 B. Address any conflicts between state goals under this subchapter;
- 6 C. Address any conflicts between regional and local issues; and
- 8 D. Address the State's coastal policies.

10
 12 **3. Implementation strategy.** A comprehensive plan may must include an implementation strategy section that contains a timetable for the implementation program, including land use ordinances, ensuring that the goals established under this subchapter are met. These implementation strategies must be consistent with state law and must actively promote policies developed during the planning process. The timetable must identify significant ordinances to be included in the implementation program. The strategies and timetable must guide the subsequent adoption of policies, programs and land use ordinances. In developing its strategies and subsequent policies, programs and land use ordinances, each municipality may shall employ the following guidelines consistent with the goals of this subchapter:

26 A. Identify and designate at least 2 basic types of geographic areas:

28 (1) Growth areas, which are those areas suitable for orderly residential, commercial and industrial development forecast over the next 10 years. Each municipality should shall:

- 34 (a) Establish standards for these developments;
- 36 (b) Establish timely permitting procedures;
- 38 (c) Ensure that needed public services are available within the growth area; and
- 40 (d) Prevent inappropriate development in natural hazard areas, including flood plains and areas of high erosion; and

44 (2) Rural areas, which are those areas where protection should be provided for agricultural, forest, open space and scenic lands within the municipality. Each municipality may shall adopt land use policies and ordinances to discourage incompatible development.

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2 These policies and ordinances may must include, without
4 limitation: density limits; cluster or special zoning;
 acquisition of land or development rights; or performance
 standards;

6 B. Develop a capital investment plan for financing the
8 replacement and expansion of public facilities and services
 required to meet projected growth and development;

10 C. Protect, maintain and, when warranted, improve the water
12 quality of each water body pursuant to Title 38, chapter 3,
 subchapter I, article 4-A;

14 D. Ensure that its land use policies and ordinances are
16 consistent with applicable state law regarding critical
 natural resources. A municipality may adopt ordinances more
18 stringent than applicable state law;

20 E. Ensure the preservation of access to coastal waters
22 necessary for commercial fishing, commercial mooring,
 docking and related parking facilities. Each coastal
24 municipality ~~should~~ shall discourage new development that is
 incompatible with uses related to the marine resources
 industry;

26 F. Ensure the protection of agricultural and forest
28 resources. Each municipality ~~should~~ shall discourage new
 development that is incompatible with uses related to the
30 agricultural and forest industry;

32 G. Ensure that its land use policies and ordinances
34 encourage the siting and construction of affordable housing
 within the community and comply with the requirements of
36 section 4358 pertaining to individual mobile home and mobile
 home park siting and design requirements. The municipality
38 ~~is-encouraged~~ shall seek to achieve a level of 10% of new
 residential development, based on a 5-year historical
40 average of residential development in the municipality,
 meeting the definition of affordable housing.
42 Municipalities are encouraged to seek creative approaches to
 assist in the development of affordable housing, including,
44 but not limited to, cluster zoning, reducing minimum lot and
 frontage sizes, increasing densities and use of municipally
 owned land;

46 H. Ensure that the value of historical and archeological
48 resources is recognized and that protection is afforded to
 those resources that merit it; and

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2 I. Encourage the availability of and access to traditional
3 outdoor recreation opportunities, including, without
4 limitation, hunting, boating, fishing and hiking; and
5 encourage the creation of greenbelts, public parks, trails
6 and conservation easements. Each municipality ~~should~~ shall
7 identify and encourage the protection of undeveloped
8 shoreland and other areas identified in the local planning
9 process as meriting such protection.

10 4. **Regional coordination program.** A regional coordination
11 program may must be developed with other municipalities to manage
12 shared resources and facilities, such as rivers, aquifers,
13 transportation facilities and others. This program ~~should~~ must
14 provide for consistency with the comprehensive plans of other
15 municipalities for these resources and facilities.

16 5. **Implementation program.** An implementation program may
17 must be adopted that is consistent with the strategies in
18 subsection 3.

19 **Sec. 8. 30-A MRSA §4354 first ¶,** as amended by PL 1991, c. 18,
20 §2 and c. 236, §2, is repealed and the following enacted in its
21 place:

22 A municipality may enact an ordinance under its home rule
23 authority requiring the construction of off-site capital
24 improvements or the payment of impact fees instead of the
25 construction. Notwithstanding section 3442, subsection 2, an
26 impact fee may be imposed that results in a developer or
27 developers paying the entire cost of an infrastructure
28 improvement. A municipality may impose an impact fee either
29 before or after completing the infrastructure improvement.

30 **Sec. 9. Transition provisions**

31 1. Chapter 300 of the rules adopted by the former Office of
32 Comprehensive Land Use Planning pertaining to qualification and
33 certification standards for municipal code enforcement officers
34 remain in effect and are administered by the Office of Community
35 Development in the Department of Economic and Community
36 Development until amended or repealed by that office pursuant to
37 the Maine Administrative Procedure Act. All other rules adopted
38 by the former Office of Comprehensive Land Use Planning are void.

39 2. All contracts issued by the former Office of
40 Comprehensive Land Use Planning in effect on December 23, 1991
41 remain in effect and are deemed to be contracts issued by the
42 Department of Economic and Community Development.

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